IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2027 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TORRENT POWER LIMITED - Petitioner(s)
Versus
USHABEN ANILKUMAR DAVE & 2 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1,
MR SHASHIKANT GADE for Respondent(s) : 1
MS KIRAN PANDEY A.G.P. for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/04/2007

ORAL JUDGMENT

1. The petitioner in this petition has challenged the order passed by the Consumer Disputes Redressal Commission, District Forum, at Ahmedabad in Misc.

Application No. 684/2006 dated 18th December, 2006, whereby the Commission has rejected the application which was filed praying for condonation of delay of 46 days caused in filing the appeal. It is rejected on the ground that since the petitioner was prosecuting petition viz., Special Civil Application No. 22330/2006 under Article 226 and Article 227 of the Constitution of India, before this Court it cannot be said to be good ground for condonation of delay and time spent in prosecuting such remedy cannot be excluded in accordance with Section 14 of the Limitation Act.

2. In the instant case, the proceedings were filed by respondent no. 1 against the petitioner before the Consumer Disputes Redressal District Forum being Complaint No. 202/2006 claiming refund of Rs.22,489=00 which was paid by respondent no. 1 to the petitioner in accordance with the assessment carried out for a period of three months under the provisions of Section 126 of the Electricity Act. Before the said forum, respondent no. 1 also prayed for grant of Rs.15,00=00 by way of compensation from mental agony and Rs.7,500=00 for expenses together with interest. The petitioner contested the said proceedings by filing even preliminary objection as to the jurisdiction of the forum to entertain such

complaint. However, the objection was overruled and by judgment and order dated 25th September, 2006, respondent no. 3 allowed the complaint and ordered the petitioner to pay refund of Rs.22,489=00 together with interest at the rate of 9% and Rs.2,000=00 towards mental agony and Rs.2,000=00 towards costs. The said order of respondent no. 3 is at annexure-D to the petition. It shows that against the claim of Rs.15,000=00 towards the expenses, Rs.2,000=00 has been ordered to be paid. In view of the same, the petitioner had approached this Court by filing Special Civil Application No. 22330/2006. This Court by order dated 13th October, 2006 admitted the petition to final hearing and granted interim relief in favour of the petitioner. However, subsequently, the said petition was disposed of by the learned Single Judge by order dated 27th November, 2006, a copy whereof is annexed at annexure-E to the petition. By the said order, the learned Judge observed that the alternative remedy by way of appeal to the Consumer Disputes Redressal State Commission was available to the petitioner and, therefore, the petitioner should avail the said remedy. The learned Judge also made certain observations in the said order in paragraph 4. They are as under :-

> “4. Having heard the learned counsel for both the sides and looking to the facts and

> circumstances of the case, and especially the judgment delivered by the Hon'ble Supreme Court in the case of (2006)4 SCC, 649 and especially para-15 thereof and also keeping in mind the provisions of section 15 of the Act of 1986, the petitioner can prefer an appeal before Appellate Forum. Delay condonation application which may be preferred by the petitioner can be appreciated by the Gujarat State Consumer Commission, looking to the present Special Civil Application. Basically, theft was found out by the petitioner company from the respondent's connection. Laboratory testing report is also supporting the case of the petitioner. The respondent had also prayed costs of Rs. 1000/-, against which the Forum has awarded costs of Rs. 3000/- from the petitioner. Keeping in mind the observations of the Division Bench of this Court in the case reported in 2006(2) GLH, 375, the Commission will decide the appeal on merits at the earliest as several other matters have been preferred before the Forum, so as to avoid multiplicity of proceedings. The Commission shall decide the appeal within a period of 12 weeks from the date of receipt of appeal, which will be filed by the petitioner within a period of three weeks from today. Meanwhile, until the appeal is taken for its hearing along with stay application, the order date 6th July, 2006 passed by the Consumer Disputes Redressal Forum, Ahmedabad in complaint no. 341 of 2006 shall remain stayed.

2.1. In view of the aforesaid, the petitioner has been relegated to the alternative remedy by way of appeal to the State Commission. As already stated above, the State Commission has not entertained the appeal on merits holding that there was delay in filing the appeal and such delay could not condoned for the reasons stated in the said order.

3. I have heard Mr. K.B. Pujara learned advocate for the petitioner, Mr. Gade learned advocate for respondent no. 1 and Ms. Kiran Pandey learned A.G.P., for respondents no. 2 and 3. It is submitted by Mr. Pujara that the order passed by respondent no. 3 was without jurisdiction and, therefore, nullity, which could be challenged before this Court at any point of time. However, this Court relegated the petitioner to respondent no. 2 Commission on the ground that alternative remedy was available. In view of the same, according to Mr. Pujara, the petitioner was prosecuting proper remedy and respondent no. 2 Commission ought to have kept that fact in view while deciding the application for condonation of delay. He has further submitted that even the learned Single Judge while disposing of the earlier petition of the petitioner directed the Commission to decide the appeal, which might be filed by the petitioner within a period of 12 weeks from the date of receipt of the appeal. He has, therefore, submitted that the Commission was required to entertain the appeal on its merits. As against that Mr. Gade has supported the order of the Commission.

4. I have carefully considered the rival submissions. Mr. Pujara has drawn my attention to the

judgment of the Apex Court rendered in the case of **Haryana State Electricity Board v. Mam Chand reported in (2006) 4 SCC pg.649,** to challenge the maintainability of the dispute before respondent no. 3. The order of the learned Single Judge categorically states that in view of the aforesaid decision as well as the decision rendered in the case of **Torrent Power AEC Ltd., v. Gayatri Intermediates Pvt. Ltd., reported in 2006(2) GLH pg.375**, the question regarding maintainability of such dispute before the forum was required to be considered. However, in the opinion of the learned Judge, the controversy can be adequately dealt with by higher forum namely the State Commission. The learned Judge, therefore, directed the petitioner to avail the remedy as provided under Section 15 of the Consumer Disputes Redressal Commission Act and also observed that delay condonation application that may be preferred by the petitioner can be appreciated by the Commission keeping in view the present Special Civil Application. Further the learned Judge also observed that as and when such application is filed the Commission shall decide the appeal on merits within a period of 12 weeks from the date of the receipt of the appeal. The learned Judge also stayed the order of respondent no. 3 passed in Complaint no. 202/2006, pending final disposal of the appeal.

5. The aforesaid facts clearly show that the learned Single Judge relegated the petitioner to remedy as provided under Section 15 of the Act, solely on the ground that it was alternative equally efficacious remedy and the issue in controversy could be decided adequately by the Commission. It also observed that the delay application could be decided by the Commission by keeping in view the proceedings of the Special Civil Application filed before this Court. Therefore, the learned Judge was of the view that the delay was required to be condoned and the appeal to be decided on its merits. However, the Commission has rejected the application for condonation of delay solely on the ground that the petitioner was prosecuting remedy under Article 226 and Article 227 of the Constitution of India, which did not get coverage of Section 14 of the Limitation Act. In my opinion, when the direction has been given by the learned Single Judge, which is reproduced verbatim herein-above, the Commission was required to treat the pendency of petition before this Court as a valid ground for condonation of delay. In view of the same, the impugned order of the Commission is quashed and set aside. The delay caused in filing appeal before the Commission is condoned and the matter is remitted to the Commission for deciding it on its

merits. The Commission shall decide the appeal within a period of 12 weeks from the date of receipt of appeal, which will be filed by the petitioner on or before 31st July, 2007. Meanwhile, until the appeal is taken for its hearing along with stay application, the order date 25th September, 2006 passed by the Consumer Disputes Redressal Forum, Ahmedabad in Complaint no. 202 of 2006 shall remain stayed.

6. In view of the aforesaid observations, the petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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